

AP Southwest, L.L.C. v. Capital Trust Funding, Inc., et al.

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Exhibit 1 Deposit Guarantee Agreement dated July 26, 2012

Exhibit 2 AP Southwest's demand to return the funds dated August 14, 2012

EXHIBIT 1

EXHIBIT 1

DEPOSIT GUARANTEE AGREEMENT

This Deposit Guarantee Agreement (hereinafter "Agreement") is made this ____ of July, 2012, by and among AP Southwest, LLC d/b/a Adolfson & Peterson Construction (hereinafter "Depositor") and Capital Trust Funding, Inc. (hereinafter "Capital Trust"). Collectively Depositor and Capital Trust may be termed "Parties".

WHEREAS, Depositor wishes to make a deposit (hereinafter "Deposit") with Capital Trust to assist in securing the financing of a project (hereinafter "Project Financing");

WHEREAS, Depositor currently has Two Million Dollars (exactly \$2,000,000.00 USD) in Escrow with UMB Bank, N.A. (hereinafter "Escrowed Funds"); and

WHEREAS, Capital Trust wishes to leverage the Deposit in the manner herein set forth below;

NOW, THEREFORE, the Parties Agree as follows:

1. Depositor will release from Escrowed Funds the amount of Two Hundred Thousand Dollars (\$200,000.00 USD) upon execution of the Agreement and the attached "Partial Release of Escrowed Funds" (hereinafter "Release") which directs UMB Bank Escrow to wire the Deposit to a Wells Fargo Bank, N.A. account as directed by Capital Trust.
2. Capital Trust will place the \$200,000 into a leveraged, high yield trading program (hereinafter "Program"), the purpose of which is to help accumulate funds for the Project Financing.
3. Depositor has the right, after Five (5) business days to inspect the progress of the accumulation of proceeds and can call the Deposit back anytime thereafter. If not recalled prior to Thirty (30) days, the Deposit will automatically be returned to Escrow (see paragraph 5 below) on the Thirtieth (30th) day, or the second business day following the 30th day, if that day falls on a holiday or weekend.
4. The Parties hereby acknowledge that the Deposit is at risk, but that Capital Trust hereby guarantees the Deposit in full.
5. The Parties further acknowledge that the UMB Bank Escrow may have to be moved to a comparable Wells Fargo Bank Escrow to facilitate the Program.

DEPOSIT GUARANTEE AGREEMENT

ACCORDINGLY, the parties have executed and delivered this Agreement as follows:

For Capital Trust Funding, Inc.:

A handwritten signature in black ink, appearing to read "Mark T. Creighton", written over a horizontal line.

By: _____
Mark T. Creighton
Managing Principal

For Adolfson & Peterson Construction:

A handwritten signature in blue ink, appearing to read "Jason Switz", written over a horizontal line.

By: _____
Jason Switz
VP/Controller

EXHIBIT 2

EXHIBIT 2



ARIZONA ■ COLORADO ■ NORTH CAROLINA ■ MINNESOTA ■ TEXAS ■ WASHINGTON

August 14, 2012

Arthur E. Fillmore, LLC
Attn: Arthur Fillmore, Esq.
11205 Meadow Lane
Leawood, KS 66211

VIA EMAIL
VIA TELECOPY

RE: REQUEST FOR THE RETURN OF THE \$200,000.00 USD DESPOSIT IN THE WELLS FARGO BANK, N.A. No. 9841912190 TO THE UMB CORPORATE TRUST SERVICES ACCOUNT No. 139090.1 FOR THE BENEFIT OF THE INVESTOR, AP SOUTHWEST, LLC.

Dear Mr. Fillmore;

Per the Deposit Guarantee Agreement dated July 26, 2012 for the above referenced \$200,000.00 USD deposited for the sole purpose of high yield trading; you are hereby notified of Depositor's request that funds of \$200,000.00 USD be returned forthwith to the UMB Corporate Trust Services Account No. 139090.1 in accordance with Paragraph 3 of the Deposit Guarantee Agreement.

Please forward your acknowledgement of this request upon receipt via electronic mail. The return of the deposit does not waive, terminate or rescind any requirements of the Escrow Agreement (or any associated security agreement) executed June 1st, 2012 for the principle amount of \$2,000,000.00 USD held in the UMB Corporate Trust Account No. 139090.1.

Your immediate attention to this matter is greatly appreciated.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Jason Switz'.

Jason Switz
Vice President/Controller
Adolfson & Peterson Construction